

Decision **DRAFT DECISION OF ALJ BUSHEY (Mailed 7/18/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James E. and Patricia C. Watkins,

Complainants,

vs.

MCI-Metro Access Transmission Services
(MCI/WORLDCOM), Inc.,

Defendant.

Case 05-05-009
(Filed May 9, 2005)

OPINION GRANTING MOTION TO DISMISS

I. Summary

This decision dismisses the complaint for failure to show a violation of law upon which the Commission can grant relief.

II. Background

James E. and Patricia C. Watkins (Watkins or complainants) allege that MCI Metro Access Transmission Services (MCI) violated various Commission regulations and decisions in telephone services provided to complainants. Complainants' major factual allegation against MCI is fraudulent billing of \$32.52 in June 2003, and \$170.02 in 2004.

The complainants seek a Commission order directing MCI to: (1) cease and desist all violations; (2) pay punitive damages in excess of \$5.8 million;

(3) make all required refunds; and (4) provide for all remedies and damages available under state law.

MCI answered that in August 2003 it had received an informal complaint from Watkins regarding a disruption in telephone service and the \$32.52 charge. That informal complaint was resolved with a settlement agreement signed by MCI and complainants on October 6, 2003. MCI stated that it fully performed its duties pursuant to the settlement agreement.

MCI further explained that all specific acts alleged in the complaint to have been done by MCI were previously litigated by the complainants in C.04-07-043, and denied and dismissed by the Commission in Decision (D.) 05-03-007. MCI contended that such claims having been litigated and denied, complainants are barred by the doctrines of res judicata and collateral estoppel from relitigating the claims. MCI concluded that the complaint should be dismissed because it failed to state any claim upon which relief can be granted.

MCI also analyzed the allegedly fraudulent charge of \$170.02 in 2004. MCI stated that the bills offered to support these allegations are the same bills that were included in C.04-07-043, and are thus barred. Nevertheless, MCI reviewed each component of the \$170.02 total and provided copies of tariffs or other documentation substantiating the charge.

MCI also requested that the Commission require the Watkins to utilize the provisions of California's vexatious litigate statute (Code of Civil Procedure § 391) for any further complaints based on the matters resolved in D.05-03-007.

III. Discussion

Pursuant to § 1702,¹ this Commission may entertain any complaint that sets “forth any act or thing done or omitted to be done by any public utility, . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.” The complaint fails to meet this standard. We therefore dismiss it. (*See AC Farms Sherwood vs. Southern California Edison Company*, D.02-11-003.)

As we found in D.05-03-007, all claims, including the \$32.52 billed on June 22, 2003, stated in the informal 2003 complaint are barred by the 2003 settlement agreement. Complainants further allege that MCI fraudulently billed \$170.04 from March through July 2004. In its answer, MCI provided a detailed analysis of all disputed billings. This analysis, and supporting documentation, showed that each charge was consistent with MCI’s then-applicable, Commission-approved tariffs.

Moreover, this Commission has no jurisdiction to award punitive damages for the torts or criminal violations alleged by complainants. Our jurisdiction is limited to reparations and cancellation of improper charges. (*Goncharov v. Southern California Gas Company* (1993) D.93-04-003; *L.T.J. Industries v. Pac Tel* (1976) 80 CPUC 836; *Blincoe v. Pac Tel* (1963) 60 CPUC 432.)

In sum, complainant has not shown any violation of law or Commission rule over which we have jurisdiction, and we dismiss the complaint accordingly.

We have also reviewed MCI’s request that complainants be treated as vexatious litigants as defined in Code of Civil Procedure § 391. While the

¹ All statutory citations are to the Public Utilities Code unless otherwise indicated.

complaints to date have been meritless, we are not able at this time to make the findings required by Code of Civil Procedure § 391, see Marcella Beagle v. Pacific Bell, D.00-03-022 (March 2, 2000).

IV. Need for Hearing

There are no disputed issues of material fact necessary to decide MCI's request for dismissal. Consequently, no evidentiary hearings are necessary and Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding, with the exception of the ex parte prohibition in Rule 7.

V. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge (ALJ) in this proceeding.

VI. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were on filed. Subsequent to the date comments were due, complainants filed a motion to extend the comment period. Complainants offered no explanation for their failure to timely file comments, and did not attach the proposed comments. The complainants have not shown good cause to grant the motion; accordingly, it is denied.

Findings of Fact

1. In D.05-03-007, the Commission found that all allegations in complainants' 2003 informal complaint had been resolved by a settlement agreement, and that the new allegations failed to state a claim upon which relief could be granted.

2. Complainants' additional allegations of improper billing in 2004 were disproved by MCI's analysis, which showed the billings to be consistent with MCI's tariffs.

3. Complainants seek damages.

4. The facts necessary to rule on the request for dismissal are not disputed.

5. Complainants filed a motion to extend the comment period after the date for filing comments.

Conclusions of Law

1. Complainants have not shown any violation of law over which this Commission has jurisdiction.

2. No hearing is necessary.

3. The Complaint should be dismissed for failure to state a claim under § 1702, effective immediately.

4. The request for vexatious litigant treatment should be denied.

5. Complainants failed to show good cause to grant their motion to extend the comment period, and the motion should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint in Case (C.) 05-05-009 is dismissed.

2. No hearing is necessary.

3. The request for vexatious litigant treatment is denied.

4. The motion to extend the comment period is denied.

5. C.05-05-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.